

Note from the Codifier: The OAH website includes notices and the text of proposed temporary rules as required by G.S. 150B-21.1(a1). Prior to the agency adopting the temporary rule, the agency must hold a public hearing no less than five days after the rule and notice have been published and must accept comments for at least 15 business days.
For questions, you may contact the Office of Administrative Hearings at 984-236-1850 or email oah.postmaster@oah.nc.gov.

TITLE 25 – OFFICE OF STATE HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.1(a3) that the State Human Resources Commission intends to adopt the rules cited as 25 NCAC 01E .1901-.1908.

Codifier of Rules received for publication the following notice and proposed temporary rule(s) on: June 22, 2023.

Public Hearing:

Date: July 10, 2023

Time: 9:00-10:00 a.m.

Location: <https://ncgov.webex.com/ncgov/j.php?MTID=m2a6738b879c6c0dcb839a393a59c45e5>

Join by meeting number (access code): 2422 474 2586

Meeting password: cfFYwWMf793

To join from a mobile device (attendees only)

+1-415-655-0003, 24224742586## US Toll or +1-904-900-2303, 24224742586## United States Toll (Jacksonville)

Reason for Proposed Temporary Action: The effective date of a recent act of the General Assembly or of the U.S. Congress, cite: N.C. Sess. Law 2023-14, effective date: July 1, 2023. N.C. Sess. Law 2023-14 created Paid Parental Leave for State Employees as established in G.S. 126-8.6 which is effective July 1, 2023.

Comment Procedures: Comments from the public shall be directed to: Denise Mazza, 116 West Jones Street, Raleigh, NC 27603; phone (984) 236-0823; email Denise.Mazza@nc.gov. The comment period begins June 23, 2023 and ends July 19, 2023.

CHAPTER 01 - OFFICE OF STATE HUMAN RESOURCES

SUBCHAPTER 01E - EMPLOYEE BENEFITS

SECTION .1900 – PAID PARENTAL LEAVE

25 NCAC 01E .1901 DEFINITIONS

For the purposes of this Section, the following definitions shall apply:

- (1) "Agency" means any State agency, department, institution, office, board, or commission, including institutions and offices of the University of North Carolina, but excluding the legislative branch, the judicial branch, community college institutions, and public schools.
- (2) "Child" means a child as defined at G.S. 126-8.6(a)(1).
- (3) "Parent" means:
 - (a) the mother or father of a child through birth or legal adoption; or
 - (b) an individual who cares for a child through foster or other legal placement under the direction of a government authority.
- (4) "Qualifying event" means when an employee becomes a parent to a child.

Authority G.S. 126-5(c19); 126-8.6.

25 NCAC 01E .1902 RELATIONSHIP TO OTHER RULES AND POLICIES

(a) This Section states the terms and conditions only for paid parental leave that is provided under G.S. 126-8.6 by an agency, as defined in Rule .1901 of this Section.

(b) For the employers who are required by G.S. 126-8.6(e) to adopt rules and policies that are "substantially equivalent" to this Section, different circumstances may require differences in terminology and in how to put into application or effect the general principles of this Section. Therefore, those employers may diverge from the text of this Section and any related State Human Resources Commission policies when adopting their rules and policies, so long as those employers' rules and policies provide a substantially equivalent amount of leave to a substantially equivalent group of employees.

(c) The paid parental leave provided under this Section is in addition to any other leave authorized by State or federal law. Nothing in this Rule shall prohibit an employer, if authorized, from providing paid parental leave in amounts greater than as required by this Rule.

Authority G.S. 126-8.6.

25 NCAC 01E .1903 ELIGIBILITY FOR PAID PARENTAL LEAVE

(a) This Section applies to all agency employees subject to G.S. 126-8.6, whether or not those employees are exempt from other sections of the State Human Resources Act.

(b) Employees may receive paid parental leave under this Section only if they are in a permanent, time-limited, or probationary appointment. Temporary employees are not eligible for paid parental leave under this Section.

(c) An agency shall allow an employee to take paid parental leave under this Section only if, at the time of the qualifying event, the employee meets each of the following conditions.

- (1) For the immediate 12 preceding months, the employee has been employed without a break in service as defined by 25 NCAC 01D .0114 by the State of North Carolina in a permanent, time-limited, or probationary appointment.
- (2) The employee has been in pay status with the State of North Carolina for at least 1,040 hours during the previous 12-month period.

Authority G.S. 126-8.6.

25 NCAC 01E .1904 LEAVE AVAILABLE TO FULL-TIME EMPLOYEES

(a) Full-time employees eligible for paid parental leave under this Section may take, in their discretion, up to the following amounts of leave:

- (1) Eight weeks of paid leave after a parent gives birth to a child.
- (2) Four weeks of paid leave after any other qualifying event.

(b) Each week of paid parental leave under this Section shall result in compensation at 100 percent of the eligible employee's regular, straight-time weekly pay.

Authority G.S. 126-8.6.

25 NCAC 01E .1905 LEAVE AVAILABLE TO PART-TIME EMPLOYEES

(a) Part-time employees (regardless whether they work half-time or more) shall receive paid parental leave under this Section if they meet all other requirements for eligibility.

(b) Part-time employees eligible for paid parental leave under this Section may take, in their discretion, a prorated amount of leave based on the hours worked in the employee's regular, weekly schedule compared to the hours worked by a full-time employee in a similar position at that agency. Notwithstanding the foregoing, the prorated leave shall not exceed the following amounts:

- (1) Four weeks of paid leave after a parent gives birth to a child.
- (2) Two weeks of paid leave after any other qualifying event.

(c) Each week of paid parental leave under this Section shall result in compensation at 100 percent of the eligible employee's regular, straight-time weekly pay.

Authority G.S. 126-8.6.

25 NCAC 01E .1906 USE OF OTHER LEAVE

The paid parental leave provided under this Section shall not be counted against or deducted from the employee's sick, vacation, or other accrued leave. For agency employees, the paid parental leave provided under this Section is in addition to any other leave authorized by law, rule, or policy, including but not limited to leave without pay provided under 25 NCAC 01E .1110, voluntary shared leave under G.S. 126-8.3 and 25 NCAC 01E .1300, or family and medical leave.

Authority G.S. 126-8.6.

25 NCAC 01E .1907 REQUESTING USE OF PAID PARENTAL LEAVE

(a) Eligible employees may take paid parental leave in one continuous period or may take intermittent use of paid parental leave. Requests for intermittent use of paid parental leave are subject to the agency's approval as stated in Paragraph (d) of this Rule.

(b) Whenever possible, eligible employees shall notify their employing agencies at least 10 weeks in advance of their intention to use paid parental leave. This requirement is so that agencies can secure backfill coverage.

(c) The agency shall not deny, delay, or require intermittent use of paid parental leave to employees who gave birth and seek to use paid parental leave in one continuous period.

(d) For all other employees, the agency may delay providing paid parental leave or may provide paid parental leave intermittently if it determines that providing the leave will cause a public safety concern, meaning a significant impairment to the agency's ability to conduct its operations in a manner that protects the health and safety of North Carolinians. For example, the extension of paid parental leave to an eligible employee who did not give birth may constitute a public safety concern if:

- (1) Providing the paid parental leave would result in agency staffing levels below what is required by federal or state law to maintain operational safety; or
- (2) Providing the paid parental leave may impact the health or safety of staff, patients, residents, offenders, or other individuals the agency is required by law to protect; and
- (3) The agency has been unable to secure supplemental staffing after requesting or diligently exploring alternative staffing options.

(e) If the agency determines that it must delay paid parental leave, or make paid parental leave intermittent, because of a public safety concern under Paragraph (d) of this Rule, the agency shall provide Paid Parental Leave as soon as practical following the qualifying event.

Authority G.S. 126-8.6.

25 NCAC 01E .1908 LEAVE ADMINISTRATION

(a) Paid parental leave under this Section may be used only once by an eligible employee within a rolling 12-month period.

(b) The birth or other qualifying event of twins, triplets, or other multiple children shall produce only one award of paid parental leave under this Section.

(c) Both parents may receive paid parental leave under this Section if they are both eligible agency employees. Both parents may take their leave simultaneously or at different times, subject to Rule .1907 of this Section.

(d) Employees shall submit documentation that they will use paid parental leave for a qualifying event under this Section. An agency may take appropriate action if an employee fraudulently requested or used paid parental leave. This action may include revoking approval and disciplinary action up to and including dismissal.

(e) Employees shall not be paid for the leave provided by this Section upon separation from the employer. The leave provided by this Section shall not be used for calculating an employee's retirement benefits and shall not accrue or be donated as voluntary shared leave.

(f) Paid parental leave provided under this Section shall be reported separately from all other paid leave. Employees and supervisors are responsible for accurate reporting of the use of this leave on the employee's time record.

Authority G.S. 126-8.6.